IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17163 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE METHODIST SCHOOL OF NURSING - Petitioner(s)
Versus
JUSTICE R J SHAH ADMISSION COMMITTEE (MEDICAL) FOR SELF - Respondent(s)

Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR BHASKAR P.TANNA, SENIOR ADVOCATE ASSISTED BY MS.MAHROOK N.KERRAVALA, ADVOCATE ON BEHALF OF TANNA ASSOCIATES for Respondent(s) : 1

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 26/07/2007

ORAL JUDGMENT

1 Rule. Learned Advocate for the respondent appears and

waives service. By consent of the parties the matter is taken up for final hearing and disposal today.

2 The petitioner, is an Educational Institution imparting education in the Discipline of Nursing and Midwifery on the pattern of self financing. The petitioner is affiliated with the hospital at Nadiad run by the Methodist Church in India through its Gujarat Regional Conference, in the name and style of "*Methodist Hospital, DDMM Institute of Cardilogy, Nadiad*". The total intake of the petitioner College is 20 students per annum. The petitioner runs a Certificate Course of Diploma which is of three and a half years duration.

3 For Academic Year 2006-2007 it appears that a dispute arose between the parties as to whether the petitioner is amenable to jurisdiction of the respondent-Committee. However, out of abundant caution the petitioner approached the respondent Committee seeking permission to conduct a separate entrance test which came to be denied by the respondent Committee. The matter was carried before this Court by way of challenge to communication dated 18.08.2006 by way of Special Civil Application No. 17968 of 2006. Under interim orders the Court permitted the petitioner

to conduct its own entrance test permitting the respondent Committee to supervise the said test. Ultimately the test was conducted and, leaving the respective contentions open, this Court disposed of the petition with the observation that the principal grievance of the respondent Committee was that a belated application had been moved leaving insufficient time to the respondent Committee to record its decision in accordance with law. The Court therefore directed the petitioner to move an application for next Academic Year well in advance.

4 Accordingly on 27.11.2006, the petitioner informed the respondent-Committee about the intention of the petitioner to conduct a separate entrance test for admitting students for the course commencing from Academic Year 2007-2008. In absence of any response from the respondent Committee a reminder was sent on 18.06.2007 to which the respondent-Committee responded vide communication dated 20.06.2007. The Committee offered two alternatives, the option to be exercised by the petitioner but in principle not accepting the stand of the petitioner being entitled to conduct a separate entrance test. Subsequently, correspondence has been exchanged between the parties on 26.06.2007 and

27.06.2007 but the respective stands have not changed.

5 After hearing the parties it becomes apparent that in principle the respondent Committee does not seriously dispute the credentials of the petitioner Institution. The only caveat being that students applying for admission to the petitioner institution along with applications to other similarly situated institutions may not be required to take separate tests at different places. However, for this Academic Year also the position that obtains is that the petitioner institution is facing a situation where the petitioner is running out of time. The only difference in the genesis of the situation is : this year the application was moved well in time but the respondent Committee could not respond well within time and initiate a dialogue as expected by the Court.

6 In the circumstances, without recording any opinion as to merits of the respective stands, for the present Academic Year 2007-2008, it will be open to the petitioner institution to conduct a separate entrance test on its own and it will be open to the respondent Committee to oversee the process of admission in the circumstances. The petitioner shall accordingly intimate schedule of the test to be held to the

respondent Committee so as to enable the Committee to over-see such test. The Court expects that the parties shall initiate a dialogue to resolve the issue for future years and such a dialogue may be initiated well within time by either side, and responded by the other side as and when such initiation is made by one side.

7 The petition is accordingly allowed in the aforesaid terms for the Academic Year 2007-2008 leaving the issue of right of the respondent Committee to control the admission process of this particular discipline open considering the pendency of Special Civil Application No. 15713 of 2005.

8 In the result, the petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt